



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 100

[Docket Number USCG-2022-0232]

RIN 1625-AA08

### Special Local Regulation; Bonita Tideway, Brigantine, NJ

**AGENCY:** Coast Guard, Department of Homeland Security (DHS).

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary special local regulation for navigable waters of the Bonita Tideway near Brigantine, NJ. This action is needed to provide for the safety of life on these navigable waters during a rowing competition on April 2, 2022, and April 3, 2022. This rulemaking prohibits persons and vessels from being in the regulated areas during the enforcement period unless authorized entry by the Captain of the Port (COTP), Delaware Bay Zone or a designated representative.

**DATES:** This rule is effective from 4 p.m. on April 2, 2022, through 1 p.m. April 3, 2022. This rule will be enforced from 4:30 p.m. to 7:30 p.m. on April 2, 2022, and from 7:30 a.m. to 12:30 p.m. on April 3, 2022.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2022-0232 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email MST1 Jennifer Padilla, Waterways Management Division, Sector Delaware Bay, U.S. Coast Guard; telephone (215) 271-4889, email [Jennifer.l.padilla@uscg.mil](mailto:Jennifer.l.padilla@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

### **II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the event sponsor required a change of location from the planned event area near Atlantic City, NJ. The sponsor notified the Coast Guard on March 17, 2022, of the location move to Brigantine, NJ. Publishing an NPRM would be impracticable and contrary to the public interest, because we must establish this special local regulation by April 2, 2022, to ensure the safety of participants and the public. Possible hazards include risks of participant injury or death resulting from near or actual contact with non-participant vessels traversing through the regulated area.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to provide for the safety of life on these navigable waters during a rowing competition on April 2, 2022, and April 3, 2022.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The Secretary has delegated ports and waterways authority, with certain reservations not applicable here, to the Commandant via DHS Delegation No. 00170.1(II)(70), Revision No. 01.2. The Commandant has further delegated these authorities within the Coast Guard as described in 33 CFR 1.05-1 and 6.04-6. The Coast Guard has determined that the Stockton University Rowing competition could pose a risk to participants or waterway users if normal vessel traffic were to interfere with the event. Possible hazards include risks of participant injury or death resulting from near or actual contact with non-participant vessels traversing through the regulated areas. In order to protect the safety of all waterway users, including event participants and spectators, this rule establishes a special local regulation on April 2, 2022, and April 3, 2022, within specified waters of Bonita Tideway, Brigantine, NJ. This rule prevents vessels from entering, transiting, mooring or anchoring within areas specifically designated as regulated area during the periods of enforcement, unless authorized by the Captain of the Port (COTP), or designated Event Patrol Commander.

#### **IV. Discussion of the Rule**

This rule establishes a special local regulation from 4:00 p.m. on April 2, 2022, until 1 p.m. on April 3, 2022. The special local regulation will be enforced from 4:30 p.m. to 7:30 p.m. on April 2, 2022, and from 7:30 a.m. to 12:30 p.m. on April 3, 2022. The regulated area will cover all navigable waters of Bonita Tideway in Brigantine, NJ, within a polygon bounded by the following: originating on the northern portion at approximate position latitude 39°24'33" N., longitude 074°22'28"W.; thence southwest across the Bonita Tideway to the shoreline to latitude 39°24'22" N., longitude 074°22'49"W.; thence southwest along the shoreline to latitude 39°23'49" N., longitude 074°23'33"W.; thence across the Bonita Tideway to the shoreline at latitude 39°23'43" N., longitude 074°23'33"W.; thence north along the shoreline to the point of origin. The

duration of the regulated area is intended to protect participants and waterway users in these navigable waters before, during, and after the scheduled event. No vessel or person will be permitted to enter the regulated area without obtaining permission from the COTP or a designated representative.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size and duration of the regulated area, which would impact a small designated area of the Bonita Tideway. Vessels will be able to transit the regulated area during the enforcement period as directed by the Event Patrol Commander (PATCOM) or official patrol vessel.

### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation lasting only 10 hours over two days that will prohibit or restrict entry within the regulated area during a rowing competition. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A memorandum for record (MFR) supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

**PART 100 - SAFETY OF LIFE ON NAVIGABLE WATERS**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add § 100.T05-0232 to read as follows:

**§ 100.T05-0232 Special Local Regulation; Bonita Tideway, Brigantine, NJ.**

(a) *Regulated area.* All navigable waters of the Bonita Tideway in Brigantine, NJ, within the polygon bounded by the following: originating on the northern portion at approximate position latitude 39°24'33" N., longitude 074°22'28"W.; thence southwest across the Bonita Tideway to the shoreline to latitude 39°24'22" N., longitude 074°22'49"W.; thence southwest along the shoreline to latitude 39°23'49" N., longitude 074°23'33"W.; thence across the Bonita Tideway to the shoreline at latitude 39°23'43" N., longitude 074°23'33"W.; thence north along the shoreline to the point of origin.

- (b) *Definitions.* The following definitions apply to this section:

(1) *Captain of the Port Representative* or *COTP Representative* means a commissioned, warrant, or petty officer of the Coast Guard designated by name by the Captain of the Port to verify an event's compliance with the conditions of its approved permit.

(2) *Event Patrol Commander* or *Event PATCOM* means any vessel assigned or approved by the respective Captain of the Port with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign, or any state or local law enforcement vessel approved by the Captain of the Port in accordance with current local agreements.

(3) *Non-participant* means a person or a vessel not registered with the event sponsor either as a participant or an official patrol vessel.

(4) *Official patrol vessel* or *official patrol* means any vessel assigned or approved by the respective Captain of the Port with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign, or any state or local law enforcement vessel approved by the Captain of the Port in accordance with current local agreements.

(5) *Participant* means any person or vessel registered with the event sponsor as participating in the event or otherwise designated by the event sponsor as having a function tied to the event.

(c) *Patrol of the marine event.* The COTP may assign one or more official patrol vessels, as described in § 100.40, to the regulated event. The Event PATCOM will be designated to oversee the patrol. The patrol vessel and the Event PATCOM may be contacted on VHF-FM Channel 16. The Event PATCOM may terminate the event, or the operation of any vessel participating in the marine event, at any time if deemed necessary for the protection of life or property.

(d) *Special local regulations--(1) Controls on vessel movement.* The Event PATCOM, COTP Representative, or official patrol vessel may forbid and control the movement of all persons and vessels in the regulated area(s). When hailed or signaled by an official patrol vessel, the person or vessel being hailed must immediately comply with all directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.



(2) *Directions, instructions, and minimum speed necessary.* (i) The operator of a vessel in the regulated area must stop the vessel immediately when directed to do so by a COTP Representative or official patrol vessel and then proceed only as directed.

(ii) A person or vessel must comply with all instructions of the Event PATCOM, COTP Representative, or official patrol vessel.

(iii) A non-participant must contact the Event PATCOM or an official patrol vessel to request permission to either enter or pass through the regulated area. If permission is granted, the non-participant may enter or pass directly through the regulated area as instructed by the Event PATCOM or official patrol vessel at a minimum speed necessary to maintain a safe course that minimizes wake and without loitering.

(3) *Postponement or cancellation.* The COTP or Event PATCOM may postpone or cancel a marine event at any time if, in the COTP's sole discretion, the COTP determines that cancellation is necessary for the protection of life or property.

(e) *Enforcement period.* This section will be enforced from 4:30 p.m. to 7:30 p.m. on April 2, 2022, and from 7:30 a.m. to 12:30 p.m. on April 3, 2022.

Dated: March 29, 2022.

Jonathan D. Theel  
Captain, U. S. Coast Guard  
Captain of the Port, Delaware Bay.

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